



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MEMORANDUM

PAUL R. LEPAGE

GOVERNOR

TO: Board of Environmental Protection

PATRICIA AHO

COMMISSIONER

FROM: Mark Stebbins, Land & Water Quality

DATE: January 5, 2012

RE: Provisional adoption of amendments to Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay & Silt and the Performance Standards for the Storage of Petroleum Products

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**Statutory and Regulatory Reference:**

P.L. 2011, Chapter 26, Resolve To Establish a Single Construction Permit for Certain Above Ground Oil Storage Tanks in Gravel Pits and Quarries and 38 M.R.S.A. § 341-D which provides the Board of Environmental Protection with the authority to adopt, amend and repeal rules as necessary for the conduct of its business.

**Location:**

The proposed rule only applies to the organized areas of the State and mining operations licensed under the Performance Standards for Excavations, 38 M.R.S.A. §490-C

**Description:**

As required by PL 2011 Chapter 26, the Department of Environmental Protection is directed to amend its rules *Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and the Performance Standards for the Storage of Petroleum Products*, 06-096 CMR 378 to allow licensed mining operation to store of a small amount of diesel fuel on significant sand and gravel aquifers mapped by Maine Geological Survey. Specifically, the amendment would allow for up to 2 above ground diesel fuel tanks, in a single location on a parcel of property with an aggregate capacity not to exceed 1,100 gallons without the currently required variance required under department rules. In addition, the proposed rule ensures consistency between department programs.

The Board held a public hearing on the proposed amendments to Chapter 378 on November 3, 2011, hearing testimony from 1 person representing the Maine Aggregate Association. The Department did not receive any other comments on the proposed rule. Attached to the rule proposed for adoption is the Basis Statement, which details the specific comments and the department's response to them. Comments received generally supported the recommended changes to the proposed rule. Additionally, copies of all

written comments have been sent under separate cover for your information. No significant changes were made to the rule in response to comments.

**Department Recommendation:**

The department recommends the Board provisionally adopt these rules as amended. If the Board provisionally adopts these amendments, they will be submitted to the Legislature in January 2012 for its consideration.

**Estimated Time of Presentation:**

Approximately 10 minutes.